

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Service Rules for the 698-746, 747-762)	WT Docket No. 06-150
and 777-792 MHz Bands)	
)	
Revision of the Commission's Rules to)	CC Docket No. 94-102
Ensure)	
Compatibility with Enhanced 911)	
Emergency)	
Calling Systems)	WT Docket No. 01-309
)	
Section 68.4(a) of the Commission's)	
Rules)	
Governing Hearing Aid-Compatible)	WT Docket No. 03-264
Telephones)	
)	
Biennial Regulatory Review –)	
Amendment of Parts 1, 22, 24, 27, and)	
90 to Streamline and Harmonize)	WT Docket No. 06-169
Various Rules Affecting Wireless Radio)	
Services)	
)	
Former Nextel)	
Communications, Inc. Upper)	PS Docket No. 06-229
700 MHz Guard Band Licenses)	
and Revisions to Part 27 of the)	
Commission's Rules)	
)	
Implementing a Nationwide,)	WT Docket No. 96-86
Broadband, Interoperable)	
Public Safety Network in the)	
700 MHz Band)	
)	
Development of Operational, Technical		
and Spectrum Requirements for		
Meeting Federal, State and Local Public		
Safety Communications Requirements		
Through 2010		

COMMENTS OF NENA

The National Emergency Number Association (“NENA”) hereby responds to the invitation to comment on the Further Notice of Proposed Rulemaking (“FNPRM”) in the captioned proceeding.¹ NENA filed last year on issues related to 9-1-1 access under the rubric of Docket 94-102.² Our participation in the other captioned dockets, notably 06-229, arises from our interest in the potential of a national broadband public safety network to advance NENA’s objectives in Next Generation 9-1-1 (“NG9-1-1”).³ A recent schematic rendering of a “blueprint for a system of systems” is appended at Exhibit A hereto.

Summary. NENA supports the tentative conclusions (FNPRM, ¶174) to re-designate the public safety wideband spectrum for broadband use consistent with a nationwide interoperability standard and to consolidate the 12 MHz of narrowband channels as the upper half of the existing 24 MHz Public Safety block. This would leave the lower 12 MHz for public safety broadband use adjacent to commercial broadband blocks and facilitate public safety shared applications. We recognize that the broadband infrastructure of a national license will not emerge overnight, and that transitional use of wideband may be appropriate.

We also comment below on the Frontline proposal. Because our tentative conclusions are generally favorable toward that proposal in concept, we would

¹ 74 Federal Register 24238, May 2, 2007.

² Comments, September 29, 2006; Reply Comments, October 20, 2006.

³ <http://www.nena.org/pages/ContentList.asp?CTID=65>. *See also*, <http://www.its.dot.gov/ng911/>

support the positioning and sizing of commercial spectrum blocks in ways that best accommodate the treatment of the E block as a single national geographic license.

(FNPRM, ¶203)

National License for 12 MHz. NENA believes the current FNPRM must be read against the backdrop of the Ninth Notice of Proposed Rulemaking (new Docket 06-229, continuing Docket 96-86)⁴ which is part of the caption in this proceeding.

However, there is very little discussion of the Commission's proposal there to

(1) allocate 12 megahertz of the 700 MHz public safety spectrum from wideband to broadband use; (2) assign this spectrum nationwide to a single national public safety broadband licensee; (3) permit the national public safety broadband licensee also to operate on a secondary basis on all other public safety spectrum in the 700 MHz band; (4) permit the licensee to use its assigned spectrum to provide public safety entities with public safety broadband service on a fee for service basis; (5) permit the licensee to provide unconditionally preemptible access to its assigned spectrum to commercial service providers on a secondary basis; (6) facilitate the shared use of commercial mobile radio service (CMRS) infrastructure for the efficient provision of public safety broadband service; and (7) establish performance requirements for interoperability, build out, preemptibility of commercial access, and system robustness.⁵

We discuss further below the reasons NENA believes it important for the

Commission to make clear that the proposal remains under consideration.

Narrowband Relocation Funding. At ¶265, the FNPRM asks how to pay for the reconfiguration of the narrowband half of the existing 24 MHz public safety block. NENA does not favor using the Public Safety Interoperable Communications Grant Program for this purpose. We would be interested in seeing estimates of this expense and whether it could be fronted by the E block auction winner. If the

⁴ FCC 06-181, released December 20, 2006.

⁵ FCC 06-181, at ¶4.

national licensee were asked to pay, what would be the effect on charges to public safety entities for use of E block spectrum? If the effect were tolerable, it does not seem unreasonable to ask public safety broadband users to pay for a narrowband reconfiguration that benefits all such users.

Performance Requirements. With respect to the proposed obligations for the national licensee of the E block (FNPRM, ¶274), NENA appreciates and supports the FCC's decision (note 556) to accelerate the system build-out over that proposed by Frontline. We are concerned, however, that population benchmarks not be the sole measure of coverage. We would like to hear from Frontline and others how much territory could remain without service after 10 years despite 98% coverage of the population. Alaska draws special mention, but not

Hawaii or other extra-continental parts of the U.S. On behalf of its members who serve rural and off-shore jurisdictions, NENA suggests a timetable that will include them.⁶

Even if the Frontline proposal is not accepted and no E block created for the upcoming auction, it is important for the Commission to consider adopting some mix of population and geographic coverage for any national license awarded in the 12 MHz of existing public safety spectrum that has been proposed for exclusive broadband use. The Ninth Notice last December did not suggest what those benchmarks might be, but the population coverage standards at ¶274 of the current FNPRM seem a good place to start and to blend these with geographic coverage as well.

License Term. Frontline proposes an initial 15-year license. We would be more comfortable with a license term of ten years, coinciding with the substantial completion of the proposed build-out to 98% population coverage. The licensee’s success in meeting its build-out requirements should be a substantial factor in any decision to renew the national E block license.

9-1-1 Requirements. Having supported the Commission’s decision (Report and Order, ¶129) to “apply 911/E911 requirements to all commercial mobile radio services” at 700 MHz, we cannot accept the contrary view attributed to Frontline at ¶280 of the current FNPRM. There may be circumstances where E9-1-

⁶ The FNPRM (¶212) tentatively adopts geographic benchmarks for commercial services. We think some combination of territorial and population coverage might be useful for the E block licensee in its partnership with public safety.

1 obligations rightly would fall upon an E block licensee. We understand that Frontline envisions transactions in which, as a wholesaler, it might offer bundled services to retail providers that would include 9-1-1 access. We look forward to further elucidation in Frontline's comments.

9-1-1 and Public Safety Broadband. It is increasingly clear that the future of 9-1-1 and emergency communications in general is going to be based on Internet Protocol (IP). It is also clear that a significant amount of communications will be wireless, whether the communication is from the public to 9-1-1 or among responding agencies or among individual responders in the field. The NG9-1-1 system will not be founded on the traditional public switched telephone network. Nor will first responder voice communications be based solely on older analog technology. If emergency communications and the 9-1-1 system are all headed down the same IP path, we must start thinking more about the way the public communicates with 9-1-1 and how the emergency response community answers in response to calls for help as one single issue. As the sole national organization focused entirely on, 9-1-1, NENA expects to be at the table during discussions of national public safety broadband networks.

The Frontline proposal describes such a network. Similarly, proponents of NG9-1-1 have described the future 9-1-1 system as part of a broader emergency services system, in which 9-1-1 is one set of applications on an IP-based emergency services network. People are accustomed to thinking of this “emergency services network” as a wired network. It is time to recognize that a wireless network of sufficient coverage and capacity is equally important to NG9-1-1.

Timing of Agreement. One of NENA’s principal concerns is that the details of a proposed “Network Sharing Agreement” would not be worked out until after the auction is over and the E block winner known. The present state of

uncertainty about those details—such as the definition of “emergency”⁷ -- tends to favor Frontline and to discourage others from bidding on the E block. We are inclined to ask for more specificity from the Commission, before the

⁷ FNPRM, ¶281.

auction, as to what it would expect to see in a Network Sharing Agreement rather than leaving everything until later.

NENA understands that Frontline has been engaging in discussions with national public safety organizations that could establish at least part of the frame for a future Network Sharing Agreement.⁸ These parties have every right to exchange views within this relatively small group, but we believe that status reports on this process belong on the record of the current FNPRM. If their negotiations continue, we invite the parties to use the rounds of comments and subsequent ex parte communications for this purpose.⁹

Failure of Agreement. We are as concerned as the FCC about what happens if the E block winning bidder and the public safety community fail to reach agreement on network sharing. To this end, NENA supports time limits on the negotiation. We will defer to an examination of the comments of others any conclusion on whether binding arbitration would be any better, or perhaps worse, than simply declaring the negotiation a failure and returning the spectrum for later re-auction. While it is true that such delay would not be appealing, it is also true that we have no present experience with or expectations of a national shared network. Better to get the deal right the first time than to be forced into an arbitrated settlement that might satisfy neither side. At this time, NENA cannot

⁸ NENA and APCO issued earlier this month a Statement of Cooperation on NG9-1-1. <http://www.nena.org/media/files/NGNENA-APCOAllianceRelease.pdf>.

⁹ The Commission has used “negotiated rulemaking” in the past to elicit recommendations from relatively small groups of interested parties. *See, e.g.* Report DC 95-135, November 28, 1995, CC Docket 87-124. We think informational reporting from the present small

support binding arbitration.

Alternatively, if the Commission remains serious about its own proposal from last December in the Ninth Notice – to create a single national license in the 12 MHz of existing

group of negotiators would suffice to keep the larger interested public apprised.

public safety spectrum that would be set aside for broadband use – perhaps this remains the best

guarantee of a reasonable and prompt outcome for any Network Sharing Agreement negotiated between public safety representatives and the Block E auction winner. That is, unless the combined shared network of 22 MHz can be resolved timely by the parties, the default broadband national network would be the 12 MHz system proposed by the FCC in the Ninth Notice.¹⁰

To cut the national interoperable broadband spectrum available to public safety by nearly half is not a step to be taken lightly, but it surely would serve to keep focused the parties attempting to negotiate the larger Network Sharing Agreement. Moreover, it should be noted that the FCC’s proposal in the Ninth Notice was itself a framework for public safety and commercial sharing of spectrum, expressed in these final three points from ¶4:

(5) permit the licensee to provide unconditionally preemptible access to its assigned spectrum to commercial service providers on a secondary basis; (6) facilitate the shared use of commercial mobile radio service (CMRS) infrastructure for the efficient provision of public safety broadband service; and (7) establish performance requirements for interoperability, build out, preemptibility of commercial access, and system robustness.¹¹

In sum, NENA believes that the concern expressed at ¶282 of the current FNPRM can be alleviated by a Commission caveat delivered in advance of the auction: that in the event the Block E licensee and the public safety negotiators fail

¹⁰ NENA understands that the E block bidder would be deprived of certain commercial expectations if a Network Sharing Agreement could not be reached, but we believe there are equitable remedies for such an outcome.

¹¹ FCC 06-181, at ¶4.

to conclude a Network Sharing Agreement, either the spectrum will revert for re-auction or the plan for a 12 MHz national

system will proceed.¹² Given the above, we do not support binding arbitration (FNPRM, ¶¶282-83) of a Network Sharing Agreement.

Complaints. Should such an agreement come about, the FNPRM (at ¶289) is right to ask about “special process” for public safety complaints against the performance of an E Block licensee. Hypothetical remedies of license cancellation or other “capital” punishments may not fit the crimes of poor performance. The more specific the rules for the construction and operation of the shared national system, the more likely that redress by forfeiture would be effective.

Open Access. While NENA generally favors the competitive values of “open access” to public networks, the concept is not without its necessary limits. Our PSAP telecommunicators and managers are too familiar with the daily abuses of 9-1-1 calling by persons whose aim is to avoid detection for NENA to welcome all comers and all equipment. We look for certifications and other reasonable restrictions to be negotiated in the Network Sharing Agreement or to be imposed in any national license for the 12 MHz system suggested by the FCC in the Ninth Notice.

Respectfully submitted,

NENA

By _____
James R. Hobson
Miller & Van Eaton, PLLC

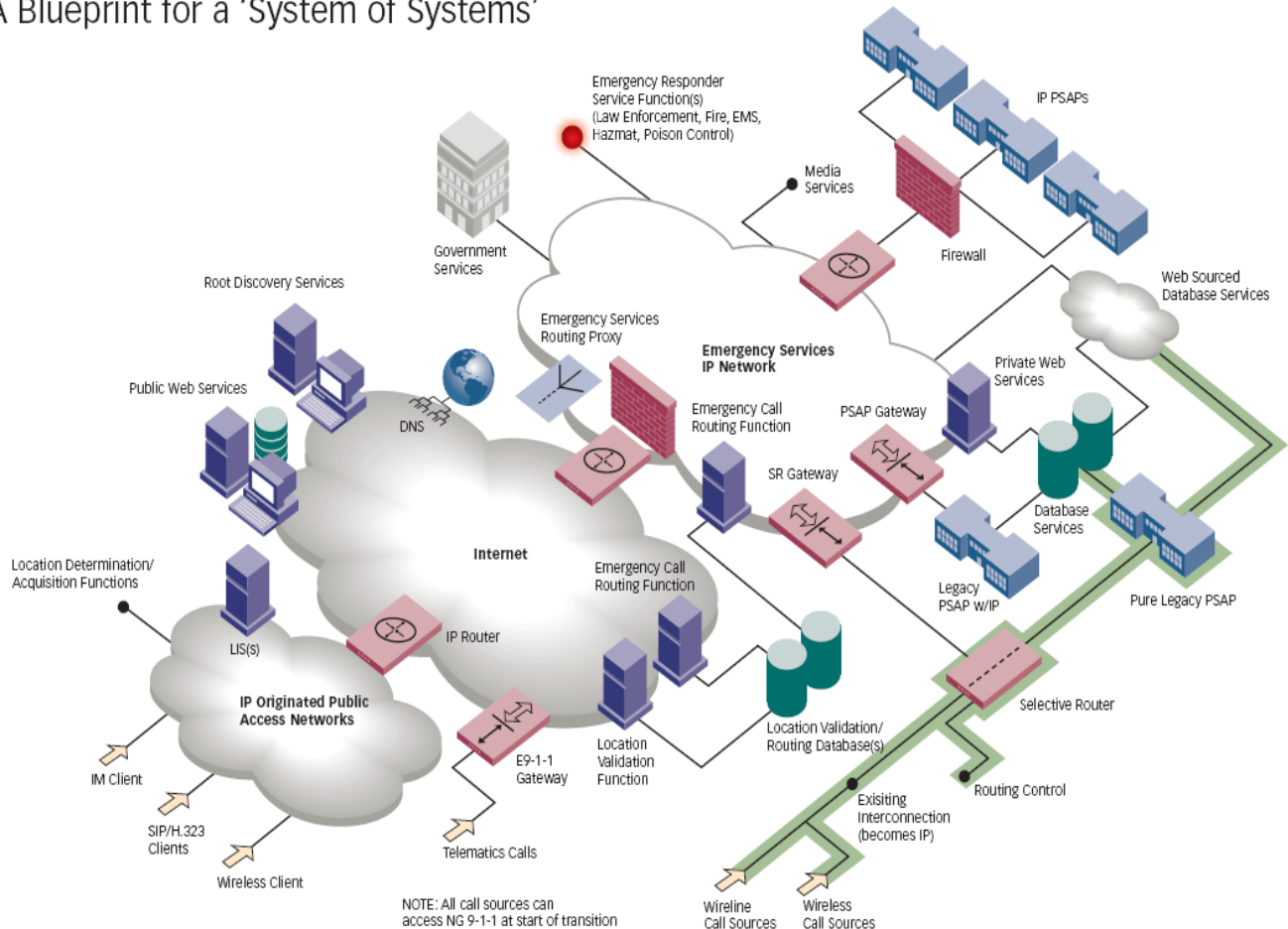
¹² We take to heart the recent warning that it would be “impractical to build a network with sufficient capacity to handle all communications needs—essential as well as non-essential—in times of emergency,” and we look for guidance whether 22 MHz or 10 MHz or some other size is practical in this sense. “Toward a Next Generation Network for Public Safety Communications,” Dale Hatfield and Philip Weiser, Silicon Flatirons Program, University of Colorado School of Law, May 16, 2007, at v.

May 23, 2007

1155 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036-4320
(202) 785-0600
ITS ATTORNEY

The Future of 9-1-1 and Emergency Communications

A Blueprint for a 'System of Systems'



4.03 *US DOT GOALS*

The document entitled Next Generation 9-1-1 System Preliminary Concept of Operations was distributed by NENA and the consultant organizations at a recent meeting in Nashville, TN listed the following as goals for the DOT initiative.

Enable E9-1-1 calls from any networked communication device.

Enable geographic-independent call access, transfer, and backup among PSAPs and between PSAPs and other authorized emergency organizations.

Encourage an open architecture, interoperable internet work of all emergency

organizations.